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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/362,547	01/03/1995	ROLF WIEDERMANN	MO-4188/LEA-	2914

7590 09/17/2002
BAYER CORPORATION
PATENT DEPARTMENT
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EXAMINER

COONEY, JOHN M

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 09/17/2002

29

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/362,547

Applicant(s)

WIEDERMANN ET AL.

Examiner

John m Cooney

Art Unit

1711

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s): _____ 6) ☐ Other: _____

Art Unit: 1711

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Volkert(5,096,933).

Volkert discloses processes for the production of rigid polyurethane foams containing isocyanurate linkages prepared by mixing and reacting polyisocyanates, various 2+ hydroxyl group containing higher molecular weight polyols, blowing agents inclusive of alkanes alone, flameproofing agents, and chain extenders/crosslinkers (see the entire document). Volkert's examples utilize sucrose based polyols which are branched and recites trimethylolpropane based polyols which are all branched polyols.

Volkert differs from applicants' claims in that NCO values of 200-600 are not particularly recited. However, Volkert does set forth ranges of variation and selectivity in choosing the NCO contents for conducting the reactions of their concern, and, further, it is well known to the ordinary practitioner in the art that increasing NCO content values leads to increased isocyanurate contents which have the known result of increased flame retardance and heat and sag resistance. Accordingly, it would have been obvious for one having ordinary skill in the art to have increased NCO indices within the teachings of Volkert for the purpose of increasing the relative amount of isocyanate based material in the final products in order to arrive at the products of applicants' claims in the absence of a showing of new or unexpected results.

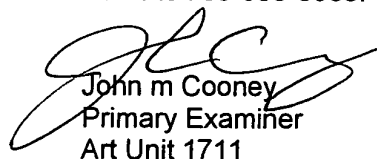
Applicants' arguments have been considered, however, the results for consideration do not rebut the position of obviousness in a manner which is commensurate in scope with the claims. Further, regarding applicants' arguments concerning Volkert's teaching of permissible inclusion of water, it is maintained that Volkert's teaching clearly anticipates exclusion of water from its invention, and such is not an element of the obviousness rejection.

Applicants' affidavit evidence has been considered but the results do not show unexpected results commensurate in scope with the scope of the claims. Further, it is not seen how the comparative examples of the affidavit having NCO values of the claims and no water, which are intended to be compared with the results of the application differ from the scope of the claims in a pertinent way, and it is, accordingly, not seen how they are, in fact, comparative showings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John m Cooney whose telephone number is 703-308-2433. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, james seidleck, can be reached on (703) 308-2462. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.


John m Cooney
Primary Examiner
Art Unit 1711